

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SCOTT TROY COOK,
Plaintiff,
vs.
MATTHEW CATE, et al.,
Defendants.

No. C 11-06581 YGR (PR)

**ORDER DIRECTING PLAINTIFF TO
FILE CASE MANAGEMENT
CONFERENCE STATEMENT;
GRANTING *IN FORMA PAUPERIS*
STATUS; AND DENYING HIS MOTION
FOR APPOINTMENT OF COUNSEL**

Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983. Thereafter, this action was reassigned to the undersigned judge. The Court ordered the parties to file separate Case Management Conference Statements, which is appropriate in the instant action because Plaintiff is proceeding without counsel. Plaintiff has not filed his Case Management Conference Statement. Plaintiff is hereby directed to file his Case Management Conference Statement by **thirty (30) days** from the date of this Order.

Also before the Court are Plaintiff's application to proceed *in forma pauperis* and his motion for appointment of counsel. Plaintiff's application for *in forma pauperis* status is GRANTED. The total filing fee due is \$350.00. The initial partial filing fee due for Plaintiff at this time is \$0.00. A copy of this Order and the attached instruction sheet will be sent to Plaintiff, the Prison Trust Account Office and the Court's Financial Office.

Plaintiff's motion for appointment of counsel to represent him in this action is DENIED.

There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. *See Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), *withdrawn in part on other grounds on reh'g en banc*, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims *pro se*

1 in light of the complexity of the legal issues involved. *See id.* at 1525; *Terrell v. Brewer*, 935 F.2d
2 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Both of
3 these factors must be viewed together before reaching a decision on a request for counsel under
4 § 1915. *See id.*

5 The Court is unable to assess at this time whether exceptional circumstances exist which
6 would warrant seeking volunteer counsel to accept a *pro bono* appointment. The proceedings are at
7 an early stage and it is premature for the Court to determine Plaintiff's likelihood of success on the
8 merits. Moreover, Plaintiff has been able to articulate his claims adequately *pro se* in light of the
9 complexity of the issues involved. *See Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th
10 Cir. 2004). Accordingly, the request for appointment of counsel is DENIED without prejudice.
11 This does not mean, however, that the Court will not consider appointment of counsel at a later
12 juncture in the proceedings; that is, after Defendants have filed their dispositive motion such that the
13 Court will be in a better position to consider the procedural and substantive matters at issue.
14 Therefore, Plaintiff may file a renewed motion for the appointment of counsel after Defendants'
15 dispositive motion has been filed. If the Court decides that appointment of counsel is warranted at
16 that time, it will seek volunteer counsel to agree to represent Plaintiff *pro bono*.

17 The Court will review Plaintiff's complaint in a separate written Order.

18 This Order terminates Docket nos. 2 and 3.

19 IT IS SO ORDERED.

20 DATED: April 20, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

INSTRUCTIONS FOR PAYMENT OF PRISONER'S FILING FEE

The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action *in forma pauperis* in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 1915, the fee is to be paid as follows:

The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner's trust account and forwarded to the clerk of the court as the first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the average monthly deposits to the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition.

Thereafter, on a monthly basis, 20 percent of the preceding month's income credited to the prisoner's trust account should be deducted and forwarded to the court each time the amount in the account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this until the filing fee has been paid in full.

If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance forward each month until the amount is fully paid.

If the prisoner has filed more than one complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting *in forma pauperis* and these instructions.

The prisoner's name and case number must be noted on each remittance. The initial partial filing fee is due within thirty days of the date of the attached order. Checks should be made payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

cc: Plaintiff/Petitioner
Finance Office